IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1411 OF 1992

1. All India State Bank Officers Federation

2. State Bank of India Officers Association (Mumbai Circle) .. Petitioners

V/s

1. Union of India

2. Central Board of Direct Taxes

3. State Bank of India .. Respondents

Mr.P.F. Kaka with Mr.Raju Z. Moray for the Petitioners.

Mr.B.M. Chatterjee for Respondents No.1 and 2.

Mr.Prakash Shinde i/b M. Dhruva & Co. for Respondent No.3.

Mr.B.A. Desai, Additional Solicitor General for the Attorney General of India.

AND

WRIT PETITION NO. 1915 OF 1997

WITH

CIVIL APPLICATION NO. 2799 OF 1998

1. All India Reserve Bank Employees' Association

2. Reserve Bank of India Employees Association Mumbai

3. Shri P.B. More .. Petitioners

V/s

1. Union of India

2. Central Board of Direct Taxes

3. Reserve Bank of India

3. Assistant Commissioner of Income-tax.. Respondents

Mr.P.F. Kaka with Mr.Raju Z. Moray for the Petitioners.

Mr.B.M. Chatterjee for Respondents No.1, 2 and 4.

None present for Respondent No.3 though served.

Mr.B.A. Desai, Additional Solicitor General for the Attorney General of India.

AND

O.S. WRIT PETITION NO. 213 OF 1997

Shri Sunil A. Bendre .. Petitioner

V/s

1. Reserve Bank of India

2. Union of India

3. The 1st Income-tax Officer,
Salaries Branch, TDS Section .. Respondents

Mr.P.F. Kaka with Mr.Raju Z. Moray for the Petitioner.

None present for Respondent No.1 though served.

Mr.B.M. Chatterjee for Respondents No.2 and 3.

Mr.B.A. Desai, Additional Solicitor General for the Attorney General of India.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATE OF RESERVING THE JUDGMENT : 14TH AUGUST 2006

DATE OF PRONOUNCING THE JUDGMENT : 13TH NOVEMBER 2006

JUDGMENT: (Per H.L. Gokhale, J.)

1. The first of these three writ petitions, i.e. Writ Petition No.1411 of 1992, is filed by a Federation of Officers of State Bank of India and its regional unit from Mumbai. The second writ petition, i.e. Writ Petition No.1915 of 1997, is filed by All India Reserve Bank Employees' Association and its Association in Mumbai. A Civil Application is taken out therein for interim relief. The third petition, i.e. Writ Petition No.213 of 1997, is filed by an officer of Reserve Bank of India. All these three writ petitions seek to challenge the constitutional validity of the latter part of clause (v) of the first proviso to section 17(2) of the Income Tax Act, 1961 [appearing in the section after clause (vi)] to the extent it treats the medical reimbursement above Rs.15,000/- per annum as taxable perquisite for the salaried persons. Since all the three petitions raise the same question of law, they have been heard and decided together.

2. The main contesting Respondents to these three petitions are the Union of India and the Central Board of Direct Taxes and the concerned Income Tax Officer. Since the vires of a provision of a Central Statute is under challenge, a notice was issued to the Attorney General of India and Mr.B.A. Desai, Additional

Solicitor General, has appeared for him. Mr.B.N. Chatterjee has appeared for the Union of India and its officers. Mr.Kaka and Mr.Moray have appeared for the Petitioners in all the three petitions.

3. All the three petitions are based on grievances of individual employees. Thus, Writ Petition No.1411 of 1992 points out that one Shri Subhash Banhatti, an officer of the State Bank of India, was going to the branch at Navghar near Vasai on 6th June 1991 accompanied by a fellow officer when the taxi in which they were travelling met with a serious accident between Jogeshwari and Goregaon on the Western Express Highway. Shri Banhatti was first moved to Cooper Hospital of the Municipal Corporation at Vile Parle and since the facility over there did not appear to be adequate, the officers of the bank removed Shri Banhatti to Jaslok Hospital. Shri Banhatti's life was saved, but the medical expenses incurred by the bank on his treatment amounting to about Rs.3,46,000/- were added to his taxable income and he was asked to make arrangement to meet the tax liability.

4. Writ Petition No.1915 of 1997 is concerning the claim for reimbursement by the 3rd Petitioner therein who is working as a Typist in the office of Reserve Bank of India at Pune. His minor son suffers from

Haemophilia, which is a disorder wherein there is a tendency of the patient bleeding severely even due to a slight injury. According to the Petitioner, the only place where the child could get treatment in Pune was one Dohade Hospital wherein the Haemophilia Care Centre of the Maharashtra Society of Haemophilia is situated. However, that hospital is not an approved hospital and, therefore, Petitioner No.3 is sought to be taxed for the amount of reimbursement made to him by the Reserve Bank of India.

5. The Petitioner in Writ Petition No.213 of 1997 is an officer working in Reserve Bank of India and is a kidney patient suffering from chronic renal failure. He was required to undergo haemodialysis thrice a week and the annual cost of this treatment at the relevant time was in the range of Rs.1.5 lakhs. That was reimbursed to him by the Reserve Bank of India. If this reimbursement was to be added to his salary as taxable income, the tax deductible at source would work out to Rs.50,000/- per year.

6. All these three petitions have been admitted and an interim order has been passed restraining the respective employers from treating the medical reimbursement as taxable income pending the final disposal of the writ petitions. Consequently, the tax thereon is not deducted.

7. (a) Before we consider the rival submissions, it will be desirable to refer to the relevant statutory provisions. Section 4 of the Income Tax Act is the charging section, which authorises the levy of income tax on the income of any person. Section 5 of the Act gives the scope of total income and sub-section (1) thereof lays down that the total income of a resident Indian in any previous year includes all income from whatever source derived which (a) is received or is deemed to be received in India by or on behalf of such person, (b) accrues or arises or is deemed to accrue or arise to him in India, or (c) accrues or arises to him outside India during such year. Section 2(24) gives the definition of "income" which is an inclusive definition. Amongst others, in clause (iii) thereof, it is provided that income includes the value of any perquisite or profit in lieu of salary taxable under sub-section (2) and (3) of section 17. Section 14 of the Act gives the various heads of income. It lays down that save as otherwise provided under the Act, all income for the purposes of charge of income tax and computation of total income shall be classified under the following heads of income:

(A) Salaries

(B) Interest on securities (omitted by Finance Act, 1988 w.e.f. 1-4-1989)

(C) Income from house property

(D) Profits and gains of business or profession

(E) Capital gains

(F) Income from other sources

Section 15 deals with various factors which constitute the income chargeable to income tax under the head "salaries". Section 16 lays down that income chargeable under the head "Salaries" shall be computed after making deductions mentioned therein. Section 17 defines "salary", "perquisite" and "profits in lieu of salary". Section 17(1) gives an inclusive definition of "salary" and in clause (iv), it specifically includes perquisites. Section 17(2) defines "perquisite" also in an inclusive manner. Clause (iv) thereof is relevant for our purpose which includes in the concept of perquisite any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee. Clause (v) includes the employer’s contribution to a life insurance scheme other than those specified and clause (vi) the fringe benefits.

(b) The first proviso thereafter however lays down that nothing in sub-section (2) of section 17 will apply to the particular medical treatments on hospitalisation mentioned in clauses (i) and (ii) or insurance premia

mentioned in clauses (iii) and (iv) therein. Clause (v) appearing thereafter lays down that any sum paid by the employer in respect of expenditure actually incurred by the employee on his medical treatment other than the two cases of hospitalisation covered in clauses (i) and (ii) will also be excluded from the coverage of perquisite provided however the same does not exceed Rs.15,000/- in the previous year. It is the vires of the latter part of this sub-clause (v) restricting the benefit to Rs.15,000/- which is under challenge. Sub-section 3) of section 17 gives the inclusive definition of "profits in lieu of salary". We are not concerned with that definition in the present matter.

8. It is therefore necessary to reproduce sub-sections (1) and (2) of section 17 of the Act which define salary and perquisite respectively.

> "Salary", "perquisite" and "profits in lieu of salary" defined.
>
> **"17.** For the purposes of sections 15 and 16 and of this section.-
>
> (1) **"salary"** includes -
>
> (i) wages;
> (ii) any annuity or pension;
> (iii) any gratuity;
>
> (iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;
> (v) any advance of salary;
> (va) any payment received by an employee in respect of any period of leave not availed of by him;

(vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule; and

(vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof;

(viii) the contribution made by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;

(2) **"perquisite"** includes-

(i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following case-

(a) by a company to an employee who is a director thereof;

(b) by a company to an employee being a person who has a substantial interest in the company;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head "salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of

the value of all benefits for amenities not provided for by way of monetary payment, exceeds fifty thousand rupees;

Provided that nothing contained in this sub-clause shall apply to the value of any benefit provided by a company free of cost or at a concessional rate to its employees by way of allotment of shares, debentures or warrants directly or indirectly under any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued in this behalf by the Central Government.

[**Explanation**.- For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;

(iiia) [Omitted by the Finance Act, 2000 w.e.f. 1-4-2001]

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee;

(v) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund or a Deposit-linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948) or, as the case may be, section 6C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), to effect an assurance on the life of the assessee or to effect a contract for an annuity; and

(vi) the value of any other fringe benefit or amenity excluding the fringe benefits chargeable to tax under Chapter XII-H as may be prescribed.

Provided that nothing in this clause shall apply to-

(i) the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer;

(ii) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family-

(a) in any hospital maintained by the Government or any local authority or any other hospital approved by the Government for the purposes of medical treatment of its employees;

(b) in respect of the prescribed diseases or ailments, in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines;

Provided that, in a case falling in sub-clause (b), the employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital;

(iii) any portion of the premium paid by an employer in relation to any employee, to effect or to keep in force an insurance on the health of such employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) for the purposes of clause (ib) of sub-section (1) of section 36;

(iv) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) for the purposes of section 80D;

(v) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than the treatment referred to in clauses (i) and (ii), so, however, that such sum does not exceed fifteen thousand rupees in the previous year;

(vi) any expenditure incurred by the employer on-

(1) medical treatment of the employee, or any member of the family of such employee, outside India;

(2) travel and stay abroad of the employee of any member of the family of such employee for medical treatment;

(3) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment;

Subject to the condition that-

(A) the expenditure on medical treatment and stay abroad shall be excluded from perquisite only to the extent permitted by the Reserve Bank of India; and

(B) the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income, as computed before including therein the said expenditure, does not exceed two

lakh rupees;

(vii) any sum paid by the employer in respect of any expenditure actually incurred by the employee for any of the purposes specified in clause (vi) subject to the conditions specified in or under that clause:

[**Provided** further that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head "salaries" (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.]

Explanation.- For the purposes of clause (2).-

(i) "hospital" includes a dispensary or a clinic or a nursing home;

(ii) "family", in relation to an individual, shall have the same meaning as in clause (5) of section 10; and

(iii) "gross total income" shall have the same meaning as in clause (5) of section 80B."

9. The submissions of the Petitioners are principally two-fold. They firstly submit that reimbursement of medical expenditure cannot be considered to be a perquisite and that it is irrational to treat it as such. There is no element or regularity or benefit therein and the amount is to be passed on or is already passed to a hospital on and then reimbursed. There is no element of any vested right or advantage to the assessee therein. Secondly, it is submitted that under sub-clause (v) of the proviso, a limit is placed at Rs.15,000/- and

reimbursement above Rs.15,000/- by the employer will be considered as perquisite to the employee. On the other hand, even if the amount spent on an employee is more than Rs.15,000/-, but it is spent in a hospital maintained by Government or Local Body or an approved hospital treating specified ailments, that would still not be included as perquisite under clauses (i) and (ii) of the proviso and will not be added to the salary of the employee concerned. It is therefore submitted that out of two employees needing hospitalisation, one going to the Government or the Municipal or the approved hospital may get medical treatment exceeding Rs.15,000/- and yet it will not be added to his income as perquisite. On the other hand, merely because an employee goes to a private hospital and incurs expenses exceeding Rs.15,000/-, in the event of reimbursement of such amount by his employer, that amount will be added to his salary and will become taxable. It is submitted that the line drawn at Rs.15,000/- is arbitrary and discriminates against an equally situated employee. It is therefore submitted that there is a violation of the constitutional guarantee of equal protection of the laws contained in Article 14 of the Constitution of India. The latter part of this sub-clause (v), namely "so, however, that such sum does not exceed fifteen thousand rupees in the previous year" is therefore sought to be struck down.

10. A good number of judgments were cited by the counsel for both the parties. As far as the Petitioners are concerned, reliance was placed firstly on the judgment of the **House of Lords in Owen v. Pook (Inspector of Taxes) - (1969) 2 WLR 775**. The taxpayer in this case carried on practice as a general medical practitioner. He also had two part-time appointments with two different hospitals and under those appointments he was supposed to be on a standby duty at certain specified time. He was paid certain travelling expenses for that purpose. He sought deduction of the whole cost of travelling incurred from his income. It was submitted on his behalf that this reimbursement of the travelling expenses was not a perquisite within the meaning of the concept under paragraph 1(1) of Schedule 2 to the Finance Act, 1956. This paragraph provided as follows:-

> "Tax under Case I, II or III shall, except as hereinafter mentioned, be chargeable on the full amount of the emoluments falling under that case, subject to such deductions only as may be authorised by the Income Tax Acts, and the expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever."

The House of Lord held that the travelling allowance paid by the hospital committee was the reimbursement for actual expenditure. It was not an emolument of the taxpayer’s office or employment. The Court held that the term "perquisite" has a known normal meaning, namely a personal

advantage, which would not apply to a mere reimbursement of necessary disbursements and "there is nothing in the other words of the definition to give it a different meaning".

11. This judgment has been quoted with approval in a decision of a Division Bench of the Gujarat High Court in the case of **Commissioner of Income v. S.G. Pgnatale - (1980) 124 ITR 391**. The assessee in that case was an employee of a French company which had entered into an agreement with an Indian company for rendering certain services in Europe and also provided backup and other services in installing a plant in India. Amongst others, he was to be paid a living allowance of Rs.220/- per day when posted at Delhi and Rs.150/- per day when posted at Baroda to cover the extra cost of living. The Division Bench noted that the very fact that the allowance was likely to be reduced or increased depending upon the change in the circumstances from place to place and depending upon whether free accommodation or free transport was allowed or not goes to indicate that the allowance was given as reimbursement rather than a personal advantage. The Division Bench followed the test in Owen v. Pook (supra) that the word "perquisite" would not apply to a mere reimbursement of a necessary disbursement. The Court observed that in its opinion, the better test was to decide whether the allowance of this

kind was given by way of reimbursement or was given by way of a personal advantage.

12. The question as to whether a daily allowance is a perquisite came up before a Division Bench of the Gauhati High Court in **Commissioner of Income-tax v. Goslino Mario - (2000) 241 ITR 314 (Gauhati)**. In that matter, the assessee, who was a Italian technician, had come to India under an agreement with an Italian firm to work with the Fertilizer Corporation of India in Assam. The question was whether daily allowance payable to the assessee was taxable or not. It was held that in view of section 10(14) of the Income-tax Act, any special allowance granted to meet expenses incurred for the purposes of duties of an office was not included in the total income. It was held that the word "perquisite" would not apply to reimbursement of necessary disbursement. It was confirmed by the Apex Court in **CIT v. Goslino Mario - (2000) 241 ITR 312 (S.C.)** and also quoted with approval by a Division Bench of this Court in **CIT v. L.A. Rosemann - (2000) 245 ITR 716** in a similar case.

13. Our attention has been drawn to judgments concerning similar allowances. Thus, in **CIT v. SEDCO Forex International - (2003) 264 ITR 320**, a Division Bench of Uttaranchal High Court has held that the boarding, food and beverages supplied to employees on oil rigs were not

perquisites. In **CIT v. D.R. Phatak - (1975) 99 ITR 14**, a Division Bench of this Court has held that City Compensatory Allowance is to compensate a Government servant for the extra perquisite at an expensive city. It is reimbursement of a personal expenses for living at a particular place and therefore not a perquisite.

14. The next judgment relied upon is in the case of **Commissioner of Income-tax, Kerala v. L.W. Russel - AIR 1965 SC 49**. In that matter, certain contribution was paid by the employer society towards the premium payable by the Respondent employee to a Superannuation Fund set up by the society. From that fund, certain payments were to be made to the employees upon their reaching the age of superannuation. It was sought to be added in the taxable income of the employee in the concerned assessment year as contribution towards perquisite under section 7(1) Explanation 1 sub-clause (v) of the Income-tax Act, 1922. The Apex Court held that to be a perquisite, it implies that an immediate right is conferred on the employee in respect of those benefits. It cannot apply to contingent payments to which the employee has no right till the contingency occurs. It was only contingent interest depending upon the reaching the age of superannuation. Hence, it was not a perquisite allowed to the employee.

15. It was also submitted on behalf of the

Petitioners that reimbursement of medical reimbursement by the State should be treated as a part of fundamental right to life under Article 21 of the Constitution of India. Reliance is placed on **Surjit Singh v. State of Punjab - (1996) 2 SCC 336** for that purpose. It was submitted that it was the obligation of the State, and particularly of the Reserve Bank of India and the State Bank of India, to which the employees concerned belong.

16. It was then submitted that in an Income-tax legislation, there cannot be a discrimination within a class consisting of similar set of taxpayers. Reliance was placed on **S.K. Dutta, Income-tax Officer v. Lawrence Singh - (1968) 68 ITR 272 (SC)**, wherein the Apex Court laid down in the context of exemption that there cannot be any distinction between individuals taxed under similar circumstances. Administrative convenience can never justify discrimination. Section 4(3)(xxi) of the Indian Income-tax Act, 1922 and section 10(26) of Income-tax Act, 1961 exempted members of Scheduled Tribes staying in certain territories including Khasi & Jaintia Hills from payment of income tax. The relevant clause had a proviso which stated "provided that such member is not in the service of Government". The Respondent had challenged this proviso. The Apex Court held that once the Respondent was a tribal from that area, there can be no distinction between the income earned by a Government

servant or by a private individual in the context of exemption from the income tax. As far as the meaning of the term "class" for the purposes of tax laws is concerned, reliance was placed on **Suraj Mall Mohta v. A.V. Visvanatha Sastri - (1954) 26 ITR 1** and **S.C. Prashar v. Vasantsen Dwarkadas - (1963) 49 ITR 1**.

17. It was thereafter submitted that the present provision cannot be considered as a measure of "tax avoidance". It was submitted that no evidence has been led in this behalf. The historical background of this provision was therefore referred. Until 1986, reimbursement of medical expenses was permissible without any limits whatsoever. From 1985 to 1991, expenditure in any public hospital without limit was not taxable. Only ordinary medical reimbursement in excess of Rs.5,000/- was made taxable. The limit of Rs.15,000/- was not intended to cover hospitalisation either under the old or the new provision. This being so, it is submitted that the restrictive part of the clause is violative of Articles 14 and 21 of the Constitution of India. Reliance was placed on **CIT v. Ajax Products - (1965) 55 ITR 741** to contend that if the section is not clear, it must fail and that a fiction under the statute should not be stretched beyond the purpose for which it is enacted.

18. The Respondents have pointed out that rules have

been framed by the Central Government to grant approval under the relevant provisions to the hospitals concerned. The said rules were criticised by the Petitioners by pointing out that the requirements therein were unreasonable and not uniform. In such a situation, it may not be possible for many of the hospitals to get the approved status. The employees will go to the hospitals which are nearby in the event of difficulties such as accidents or the bomb blasts. If the employer reimburses their medical expenses, it cannot be said that he is giving them a perquisite.

REPLY BY THE REVENUE:

19. As far as the Revenue is concerned, it was pointed out on their behalf that a reasonable classification is always permissible for the State and particularly when it comes to taxation. In one of the earliest judgments of the Apex Court in **K.T. Moopil Nair v. State of Kerala - AIR 1961 SC 552**, provisions of the relevant statute were held unconstitutional since they suffered from lack of classification and which created inequality in treatment to similarly situated persons. A rational basis is required in making the classification and if that is so, the courts do not interfere therewith. Thus, in **East India Tobacco Co. v. State of Andhra Pradesh - AIR 1962 SC 1733**, the Andhra Pradesh Assembly passed an amendment to section 5 of the Madras General

Sales Tax Act as applicable to the State granting exemption to certain variety of tobacco. The result of the amendment was that the exemption from the tax was limited to sales of what is known as "country tobacco". The sales of Virginia tobacco were liable to taxes. It was contended that this was discriminatory and reliance was placed on the judgment in the case of Moopil Nair (supra). The Apex Court referred to the judgment of the Supreme Court of United States in **Madden v. Kentucky - (1940) 309 U.S. 83** to the effect that legislatures possess the greatest freedom in classification. The burden is on the one who is attacking the legislative arrangement to negative every conceivable basis which might support it. It referred to Willis on "Constitutional Law" at page 587 to the effect:

> "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

The legislation was held to be valid.

20. Similarly in the case of **T.G. Venkataraman v. State of Madras - AIR 1970 SC 508**, transactions of sale of palm jaggery were exempted partially from sales tax, but not those concerning sale of cane jaggery. The relevant provisions of the Tamil Nadu Sales Tax Act were challenged. The Apex Court noted that cane jaggery and

palm jaggery are commercially different commodities. Palm jaggery comes under the purview of Khadi and Village Industries Board. It is a cottage industry which gives employment to mainly poor tappers who amongst other collect neera from palm and other trees and prepare jaggery by the traditional method by boiling neera to produce jaggery without the aid of any machinery. Palm jaggery and cane jaggery are consumed by different sections of the community. The Court held that if the classification is rational, the Legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. It quoted with approval the following observations in an earlier judgment in the case of **N. Venugopala Ravi Varma Rajah v. Union of India - AIR 1969 SC 1094**.

> "Tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification."

The Court therefore held that cane jaggery and palm jaggery are not commodities of the same class and, in any event, in imposing a liability to tax on transactions of sale of cane jaggery and exempting palm jaggery, no unlawful discrimination denying guarantee of equal

protection was practised.

21. Last but not the least, reliance was placed on the judgment of the Apex Court in **State of Tamil Nadu v. M.K. Kandaswami - AIR 1975 SC 1871** to the effect that in interpreting taxing statutes, a construction to defeat its purpose and in effect to obliterate it from the statute book should be eschewed. If more than one construction is possible that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile.

22. It was therefore submitted that if one looks to the scheme of the section, perquisites are included in the concept of salary, and salary is taxable. Perquisites include any sum paid by the employer in respect of an obligation which would have been payable by the assessee, but for such payment. By an enabling provision in the proviso, it is provided that this clause will not apply to value of medical treatment given in the employer's hospital or public hospitals or municipal hospitals or approved hospitals. Similarly, for specified diseases, approved hospitals are notified. Contribution to the health insurance scheme is also excluded. Sub-clause (v) is not intended for hospitalisation. That is what is specifically stated in para 5 of the affidavit in reply of Shri Madhav Mujumdar, Assistant Commissioner of

Income-tax. It is stated therein that the limit of Rs.15,000/- is only for the general medical treatment. Thus, hospitalisation in private hospitals is not covered at all. It is a matter of public policy. There is a rational basis therein. This is because otherwise the employees may go to any high charging hospital and the State will be required to pay the expenses. In the present arrangement, the employee can shift to any of these specified hospitals after an initial treatment. They are very large in number. Over and above the actual hospitalisation expenses in such hospitals, payment by the employer upto Rs.15,000/- is not to be considered as perquisite. If the reimbursement is over and above Rs.15,000/-, it will be added to his income because otherwise he would be required to make that payment which the employer is making. Thus, it is an addition to his income. Therefore, it is submitted that there is a reasonable classification and that there is no reason to invalidate the last part of proviso (v). It was thereafter submitted that as far as conditions for recognition as approved hospitals are concerned, they are legitimate and necessary. A reference was made to those conditions for that purpose. Last but not the least, it was submitted that in any case, in appropriate cases, a departure can be made where an employee is unable to get the necessary treatment in such hospitals. A reference was made to the judgment in the case of **State of Punjab v.**

Mohinder Singh Chawla - (1997) 2 SCC 83. That was a matter where the government servant had suffered an ailment which required treatment in a specialised approved hospital and on a reference, he had gone over there, and in which case the State was held to be liable go bear those expenses. Similarly, it is submitted that in such cases, a reference can be made and an appropriate order may be passed not to add such an reimbursement to the income in these cases, depending on facts. It was however submitted that there is no case made out for a general invalidation of the clause either by contending that all reimbursement of medical expenses amounts to perquisites or that it results into discrimination.

CONCLUSION:

23. We have considered the submissions of all the counsel. In the present matter, we are concerned with the challenge to the latter part of clause (v) of the first proviso to section 17(2) of the Income-tax Act, 1961 to the extent it treats the medical reimbursement above Rs.15,000/- per year as taxable perquisite for the salaried persons. The first submission of the Petitioners has been that this reimbursement is in the nature of reimbursement of necessary disbursement or actual expenditure. It does not result into any personal advantage to the employees concerned. Various cases are

relied upon in support of this proposition wherein the nature of variety of allowances came up for consideration before various courts. The first of these cases relied upon is in Owen v. Pook (supra). That was a case where the travelling expenses of the doctor concerned were reimbursed by the hospital management. The relevant provision of the statutory law in that case merely stated that income tax will be chargeable on full amount of emoluments and that emoluments will include amongst other the perquisites. The concept of "perquisite" was not defined in that provision and therefore the House of Lords held that "the term perquisite has to be given its normal meaning, namely a personal advantage". It is material to note that in the judgment itself, the House of Lords observed that there is nothing in the other words of the definition to give it a different meaning.

24. The other cases, namely CIT v. S.G. Pgnatale, CIT v. Goslino Mario and CIT v. L.A. Rosemann (supra) were all cases of employees of foreign companies engaged in India for rendering certain services. They were given certain living allowances which were meant to bear their actual expenses. There was no personal advantage involved in those payments and those payments were incidental to the services rendered. That apart, in view of section 10(14) of the Income-tax Act, any such special allowance granted to meet expenses incurred in the performance of

the duties of an office or employment of profit was not included in the total income of the employee concerned. Similar is the position in the case of SEDCO Forex International (supra) where the expenses for the food and beverages on the oil rigs were not held as perquisite, or in D.R. Phatak's case (supra), City Compensatory Allowance was held to be a reimbursement of a personal expenditure. In the present case, we cannot restrict the concept of "perquisite" to its ordinary meaning when the Legislature has preferred to use an inclusive definition. Firstly, the definition of "income" under section 2(24) itself is an inclusive definition. Under clause (iii) thereof, the term "income" includes the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17. Section 5 of the Act giving a scope of total income includes therein under sub-section (1) the income of a resident Indian in any previous year consisting of income from whatever source derived and it specifically includes the income which is received or which is deemed to be received as well as income which has accrued or which arises or is deemed to have been accrued or arisen in India and income which accrues or arises outside India as well. One has therefore to look at the inclusive definition of "perquisite" on this background. It will of course include what are considered as perquisites as per its ordinary meaning, but it will also include all such

benefits, amenities, advantages or payments which an assessee gets from his employer. We cannot ignore sub-clause (iv) of section 17(2) which includes in the definition of "perquisite" any sum paid by the employer in respect of any obligation which, but for such payment, would have been paid by the assessee. If the expenses in a private hospital were not to be reimbursed by the employer, the employee would be required to honour the obligation. If the employer reimburses that expenditure, it will have to be included under sub-clause (iv) of section 17(2) in view of the wide sweep of this clause. In view of this wide definition, it will not be permissible to restrict the concept of "perquisite" thereunder to a necessary disbursement or to a contingent payment as in CIT v. Russel (supra).

25. If the medical reimbursements were not perquisites, it would not have been necessary to make the special provisions contained in clauses (i) and (ii) of the first proviso to section 17(2) of the Income-tax Act. The Legislature has specifically provided in clause (i) that value of the medical treatment provided to the employee or member of his family in a hospital maintained by the employer will not constitute a perquisite. Similarly, in proviso (ii)(a), it is provided that where an employer incurs the expenditure for an employee or his family member on his medical treatment in a hospital run

by the Government or by local authority or any other hospital approved by the Government, that expenditure will not be treated as perquisite. It is therefore very clear that, but for these provisions, these hopitalisation expenses borne by the employer would have been perquisites added into the income of the employee concerned. Similar is the provision under proviso (ii)(b) that when it comes to prescribed diseases or the ailments, any expenditure incurred therefor will not constitute perquisite provided ofcourse the hospital is approved by the Chief Commissioner of Income-tax. There is a condition imposed under this clause, namely that the employee has to attach a certificate from the hospital specifying the disease or the ailment for which the treatment is required. He has also to attach the receipt of the amount paid to the hospital. If we accept the submission of the Petitioners that all medical reimbursements do not amount to perquisites, all these provisions will become otiose. It will mean that the Legislature has made a superfluous provision. In our view, it will not be proper to resort to any such approach.

26. For that matter, what the Petitioners are seeking is to declare that the restriction at Rs.15,000/- under sub-clause (v) is bad in law. It has been stated in the affidavit in reply on behalf of the Revenue that sub-clause (v) does not deal with hospitalisation at all.

There is no such term used in this clause as such. The clause says that any sum paid by the employer in respect of such an expenditure other than the treatment in clauses (i) and (ii) upto Rs.15,000/- will not constitute perquisite. Thus, it could be said that it is a clause available over and above reimbursement under clauses (i) and (ii) or it could also be considered as one available for other medical expenditure upto Rs.15,000/-. However, if the Legislature did not deem it fit to extend it beyond that, can it be said that it amounts to discrimination? In our understanding, it cannot be. It is for the Legislature to decide which categories are to be taxed and which categories to be excluded therefrom. The judgment in the case of S.K. Dutta v. Lawrence Singh (supra) cannot help the Petitioners. That was a case where all tribals in the particular area are exempt from taxation. Now, if that is so, surely the Government employees cannot be told that merely because they are Government employees, they will not get the benefit even if they are tribals from that area. That will surely constitute a discrimination against the government employees belonging to the Scheduled Tribes in that area. In the present case, the Legislature has not declared that it will treat all hospitalisation and reimbursement thereof as perquisite. On the contrary, the Legislation is very clear that in fact any sum paid by the employer in respect of an obligation to be honoured by the assessee will be a

perquisite. The Legislature has excluded hospitalisation in the employer's hospitals, public hospitals and hospitals treating prescribed ailments or diseases. It will cover speciality hospitals treating ailments such as diabetes, T.B., etc. This is an enabling provision. Merely because such an enabling provision is made, the Legislature cannot be faulted and cannot be told that it must extend this benefit to the treatment taken in private hospitals also. Declaring the latter part of clause (v) as unconstitutional would in fact amount to a legislation by the Court and which the Courts have always to avoid.

27. It is also material to note that such facilities in private hospitals are not available to the Government employees and giving any such benefit to treatment in all hospitals, whether Government or private, to all citizens will be a matter of policy decision. The Court cannot enter into that area under the garb of declaring a particular clause to be bad in law.

28. It is necessary to keep in mind that Article 14 forbids class legislation, but does not forbid classification. What is required is that the classification must be based on a rationale relevant to the object which is sought to be achieved. A perfect mathematical nicety and perfect equality may not be possible in this process. Legislature is always free to

recognise the degrees of protection that are required to be granted and it may confine the beneficial provision to such cases which it considers as the needy ones. We have got to presume that the Legislature understands and correctly appreciates the needs of the people and accordingly takes necessary steps. As held in **Raja Jagannath Baksh Singh v. State of Uttar Pradesh - (1962) 56 ITR 169** that the Legislature is competent to classify persons or properties into different categories and tax them differently. As held in **Federation of Hotel and Restaurants Association of India v. Union of India - 1989 (178) ITR 97**, "The State, in exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different groups or class of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied."

29. In our view, there is a reasonable classification in the provision made under the statute. It is explainable and has been properly explained by the Respondents. There is no reason therefore to set aside the particular clause on the ground that it violates the equality provision under Article 14 of the Constitution. Nor can we stretch Article 21 to invalidate this

provision.

30. It is however material to note that at one time when these writ petitions reached before the Division Bench presided over by M.B. Shah, CJ. (as he then was) on 6th May 1998, the Division Bench observed and expected that the CBDT should issue appropriate direction or clarification under section 119 of the Income-tax Act for removing the hardship caused to the employees suffering genuinely. The CBDT vide its letter dated 17th April 1998 had expressed its inability to use its power under section 119 of the Income-tax Act and observed that the matter required legislation if at all. That position has remained as it is and the Additional Solicitor General has been informed accordingly by the learned Attorney General vide his letter dated 4th August 2006, a copy whereof was placed on record.

31. We are informed that a number of employees have been given benefit of stay granted by this Court. The initial ad-interim relief was granted on 26th March 1992 and it has been running throughout all these years. The three cases cited in the three petitions are in fact hard cases. However, since we are not accepting the challenge to the concerned provision, the benefit therefrom cannot be availed of by the employees. Since the petitions are not being entertained, the interim orders in all the

matters will stand vacated and the consequences will follow. Needless to state but we make it clear that the benefit of the interim relief will not be available hereafter since all the petitions are being dismissed.

32. In the circumstances, all the three petitions and Civil Application No.2799 of 1998 are dismissed. Rule is discharged. No order as to costs.

(H.L. GOKHALE, J.

(V.R. KINGAONKAR, J.)